

### REMARKS

Claims 1-99 are pending in this Application. The Examiner has entered an Election/Restriction requirement. Applicants respectfully traverse this Election/Restriction requirement.

The Examiner has failed to make a prima facie case for requiring a Restriction. The Examiner is required to provide an appropriate explanation of separate classifications, separate status in the art or a different field of search for certain identified inventions. MPEP 803. The Examiner has not provided any such information. Accordingly, the Restriction is improper and should be withdrawn.

Further, pursuant to M.P.E.P. § 803, a restriction requirement is proper only if: (1) the inventions are independent or distinct as claimed, and (2) there would be a serious burden on the Examiner if the restriction is not required. Applicants contend that it would not be unduly burdensome for the Examiner if the restriction requirement were not required.

Applicants further object to the manner in which the Examiner has characterized the inventions. For example, the first distinct species of invention is identified as "the method of preparing submicron sized particles of an organic compound, wherein no surface modifiers are added to the solution and only one surface modifier is added to the second solvent." Claim 1 is an open ended claim by virtue of the use of "comprising" as a transitional phrase in the preamble. Thus, claim 1 cannot be read to exclude adding a surface modifier to the solution or adding additional surface modifiers to the second solvent. It is more appropriate to state this species of the invention does not require a surface modifier in the solution.

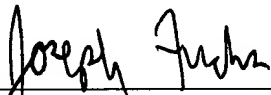
If the Examiner makes the restriction requirement final, Applicants provisionally elect to pursue the species identified as a "method of preparing submicron sized particles of an organic

compound, wherein no surface modifiers are added to the solution and only one surface modifier is added to the second solvent." Applicants intend this to be an open ended claim and should be examined as such. Thus, the Applicants provisionally elect claims 1, 2, 4, 6-8, and 13-15, which are directed to this invention.

Respectfully submitted,  
BELL, BOYD & LLOYD LLC

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BY

  
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Joseph A. Fuchs, Reg. No. 34,604  
Attorneys for Applicant  
P.O. Box 1135  
Chicago, Illinois 60690-1135  
Phone: (312) 807-4335



MARKED UP COPY OF CLAIM AMENDMENT

6. (amended) The method of claim 2 wherein the first solvent is N-methyl-2-[pyn:olidinone] pyrrolidinone.

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